

NYS HOME Program Homebuyer Down Payment Assistance Administrative Plan

A Guidebook for Grantees

New York State

Office of Community Renewal

HOME Investment Partnership Program (HOME)

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Introduction

Purpose of the Administrative Plans / How to use the Plans

This Administrative Plan (Plan) describes the Federal and State policies, procedures, and requirements applicable to a Homebuyer Down Payment Assistance Program with or without housing rehabilitation. **This Plan is specific to this activity only and supplements the General Administrative Plan that covers all HOME activities.** Chapters 1-6 cover Homebuyer Down Payment Assistance only. Chapter 7 covers Rehabilitation with Homebuyer Down Payment Assistance.

Homebuyer Down Payment Assistance to include Rental Units must be specially approved by HTFC at contract application and is not covered in this Plan.

For the purposes of this Plan, homebuyer assistance with or without housing rehabilitation does not include homebuyer development projects, which is covered under the separate Homebuyer Development Administrative Plan.

This Plan must be followed by Local Program Administrators (LPAs) in the administration of a NYS HOME Program and will be enforceable along with all aspects of the contract and Federal HOME Investment Partnership Program regulations at 24 CFR Part 92.

The “Catalogue of Federal Domestic Assistance Number” for this Program is 14.239.

All forms and related documents referred to in this Plan are available on the HCR HOME Program website at: <https://hcr.ny.gov/nys-home-program>.

Acronyms used throughout the Plan:

HUD:	Housing and Urban Development
HCR:	NYS Homes and Community Renewal
HTFC:	Housing Trust Fund Corporation
LPA:	Local Program Administrator (Non-profit or Municipality)
POA:	Period of Affordability
MWBE:	Minority/Women-Owned Business Enterprise
IDIS:	Integrated Disbursement and Information System
WAP:	NYS HCR Weatherization Assistance Provider
EAU:	HCR's Environmental Analysis Unit
OCR:	Office of Community Renewal

NYS HOME Local Program Manager: is assigned to the LPA at contract execution and is the HTFC OCR staff representative that will assist the LPA to administer the contract with HTFC.

Chapter One: Activity Eligibility

Eligible Activities

Funds may be used to assist homebuyers at or below 80% AMI to provide down payment and/or closing cost assistance to purchase a 1-4 unit existing or newly constructed home, including condominiums and coops.

The unit must meet both HTFC rehabilitation standards and *NYS and/or local code at the time of purchase*. For down payment assistance only, if the unit does not meet code at the time of purchase, it must be brought up to code to be eligible for HOME funds.

There is no requirement that the applicant be a first-time homebuyer, however, the applicant must not own a home at the time of application for assistance and the unit being purchased must not be under a Period of Affordability (POA) from receipt of previous HOME funds.

Purchases of 2–4-unit properties must cost allocate out rental units as HOME funds can only be used to assist the buyer/owner unit unless the LPA received special approval at application to serve rental units. Contact your Program Manager for assistance allocating costs/HOME assistance to only the buyer's unit.

Project Assistance Limits

HOME funds may not exceed \$80,000 per unit, inclusive of all costs. Waivers to exceed this limit may be requested through Program Managers.

The amount of HOME funds necessary for down payment assistance and housing rehabilitation must be “right sized” for the individual homebuyer’s financial situation, and if rehabilitation is necessary, based on the cost of rehabilitation to meet program property standards.

All projects must meet an underwriting and subsidy layering review. See Chapter 4 for more information on underwriting.

Chapter Two: Property Eligibility

Eligible Property Types

Down payment assistance can be used for the purchase of single family new or pre-existing homes, condominiums or cooperative units. The purchase of manufacture housing is not permitted.

The property must be documented to be decent, safe, sanitary, and in good condition and must meet NYS and/or Local Code upon closing.

If the existing housing does not meet these standards, it must be rehabilitated according to the property standards, or it cannot be assisted with HOME funds.

Ownership of the assisted home must be in compliance with one of the forms of ownership identified in the General Section of this Plan.

Purchase Price Limit

The LPA must verify that the purchase price for unit does not exceed the median purchase price for the area where the home is located, as defined by HUD's Homeownership Sales Price Limits provided by HUD for existing housing.

"Existing Housing" limits apply, except for new construction projects (built within the last 12 months). The proper number of units should be applied.

HOME Homeownership Value Limits: [HOME Homeownership Value Limits - HUD Exchange](#)

Chapter Three: Financial Management

Project Costs

Project costs are those permitted by the NYS HOME Local Program Budget Policy and detailed in Chapter 2 of the General Administrative Plan.

Examples include:

- Acquisition costs
- If rehabilitation included, rehabilitation hard costs necessary to address the improvements indicated by the property standards, HTFC Housing Rehabilitation Standards and to meet NYS and/or Local Code upon completion.
- Site improvements and connections to off-site utilities necessary to complete the rehabilitation.
- Soft costs including:
 - Project delivery
 - Other third-party costs necessary to implement the program such as inspections, legal and recording fees

Applicant Fees - Charges to Homebuyers

The LPA may not charge homebuyers servicing, origination, or other fees for the purpose of covering costs of administering the HOME program.

The LPA MAY charge nominal application fees to discourage frivolous applications. The fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's participation in the program.

Housing counseling fees may be charged only to cover costs not paid by HOME or other funds.

Disbursements

Please refer to the Program General Administrative Plan for details on Disbursements.

Please note - Because HOME is a reimbursement program, most LPAs fund the down payment and/or closing costs themselves or with a Line of Credit, however, if necessary, funds may be requested when the closing has been scheduled. Funds must be expended within 15 days of receipt by the LPA, if paying a contractor or loan, otherwise the funds must be returned to the HTFC and re-requested by the LPA when the closing is rescheduled.

Chapter Four: Homebuyer Eligibility

Housing Counseling

The homebuyer must receive a Certificate of Completion for pre-purchase housing counseling from a HUD-Certified counselor working for an agency approved to participate in HUD's Housing Counseling program. The prospective homebuyer must be deemed by the counselor as "ready to proceed" to purchase a home.

The agency approved to participate in HUD's Housing Counseling program may have funds from Federal sources other than HOME that will pay the cost for pre-purchase counseling. If so, the cost may not be charged to the HOME program.

Counseling costs may be charged to only one of the following (as permitted in the approved budget):

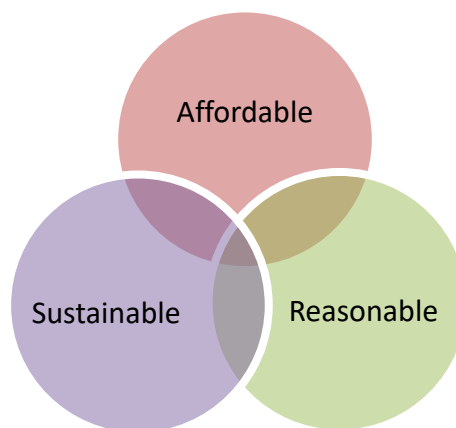
- To HOME administrative funds (if applicant does not purchase a home)
- As a project delivery cost charged to HOME (if applicant purchases a home)
- To the homebuyer, if the fee is cost-based and reasonable and not charged to the HOME program.

The file must include documentation that the LPA/HUD housing counselor reviewed the first mortgage product and determined that it is not predatory (high fees, high interest rates, etc.) and that it conforms to standard affordable housing lending criteria (fixed rate, no balloon payments, etc.)

Subsidy Layering and Underwriting

The LPA must document a subsidy layering analysis that determines the need for the HOME funds and the appropriateness of the amount of HOME assistance to the homebuyer. LPAs should "right size" the assistance to the individual homebuyer's financial need and, if applicable, the need for housing rehabilitation to meet property standards. This means homebuyers should be receiving varying amounts of HOME funds. LPAs should not be providing the same amount of HOME funds for each homebuyer.

The LPA must also document a review of expected income and job stability, estimate future adjustments to property taxes, fees to the municipality, homeowners' insurance, estimate the average monthly cost of utilities, and review liquid assets to ensure the homebuyer will have the minimum equivalent of 1 month of housing payment in personal savings following the purchase and show finances can be maintained at least through the POA.



The applicant file must contain documentation of the following to demonstrate compliance with HTFC Underwriting Guidelines for Homebuyer Qualifying Ratios:

- Housing debt to income ratio: max 35% or if no other total debt 40%
- Total debt to income ratio: max 45%

Source and Uses

A source and uses analysis to demonstrate there are enough assets/funds available to complete the purchase and, if applicable, rehabilitate the home (mortgage commitment, down payment assistance, savings, gift letter, funds for housing rehabilitation if applicable, other funds, etc.) must be documented in the file.

Chapter Five: Activity Regulations

Environmental Review Tier 2

After receiving Tier 1 (Programmatic) clearance, LPAs must also complete the Tier 2 (Individual Site Specific) check lists. Refer to the Environmental Review section in Chapter One of the General Administrative Plan.

Entering into a purchase contract prior to receiving approval is a considered a choice limiting action unless the guidelines for option contracts or conditional contracts are followed.

<https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/>

Specific language from this memo must be included as a condition of the purchase contract or the purchase may be found to be ineligible for HOME funding.

If entering into a purchase contract prior to Tier 2 approval, the following language must be in the contract for purchase:

“Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until [LPA] has provided Purchaser and/or Seller with notification that it has completed a federally required environmental review. [LPA] shall use its best efforts to conclude the environmental review expeditiously.”

Earnest deposits must be reasonable and refundable if environmental approval is not received. If the deposit is non-refundable, it must be nominal (\$1000 or less)

Down payment purchase *with rehabilitation* must include rehabilitation in the description for the Tier 2 checklist.

Lead Based Paint (LBP)

Under federal law, all residential real estate transactions involving housing built prior to 1978 require owners and agents to provide key information about lead and its hazards to people buying homes.

Buyers must receive

Protect Your Family from Lead in Your Home pamphlet [Protect Your Family From Lead](#)
and
the Seller Disclosure of LBP and LBP Hazards (if applicable).

The LPA must document that the buyer has received these in the file. (Signature of the buyer confirming receipt.)

If a home is being acquired was built prior to 1/1/78 and will not be rehabbed, then LBP requirements at 35.1000 - .1030 apply . A LBP Risk assessment (by an EPA certified Risk Assessor) is not required however a visual assessment of the unit must be conducted by a person who has completed the HUD visual assessment online training [Visual Assessment Training - HUD](#)

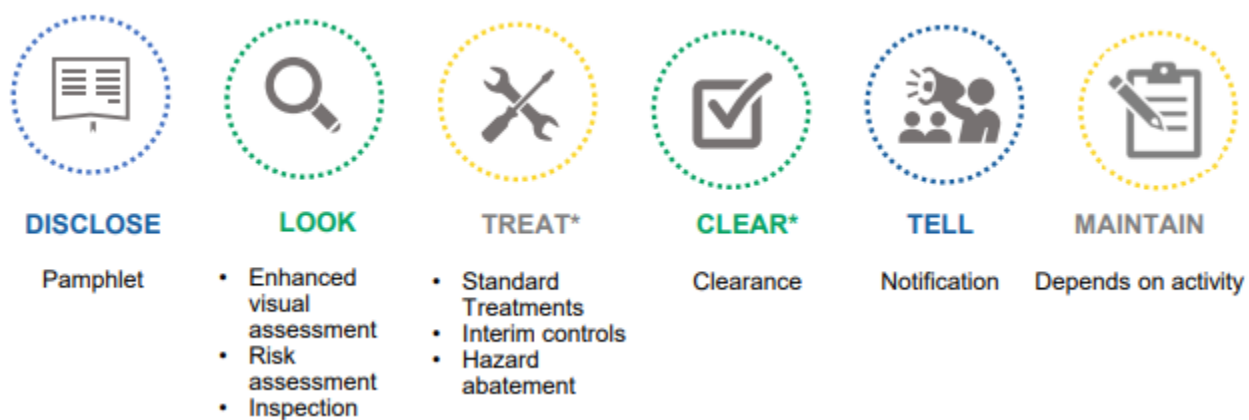
See link for additional resources on Lead Safe Hazard Rule → [LSHR Toolkit: Subpart K: Acquisition - HUD Exchange](#)

Different HUD activities have different requirements, this chart summarizes the ones for acquisition. Details on these requirements are found in this module.

Activity	Requirement
Approach to Lead Hazard Evaluation and Reduction	Identify and stabilize deteriorated paint
Notification	Yes
Lead Hazard Evaluation	Visual Assessment
Lead Hazard Reduction	Paint Stabilization – Safe Work Practices and Clearance
Ongoing Maintenance	Yes (if ongoing federal financial assistance, see Subpart K: LSSO module)
Elevated Blood Lead Level (EBLL) Requirements	No
Options	Test deteriorated paint Use safe work practices only on lead-based paint (LBP) surfaces

If the visual assessment indicates deteriorated or deteriorating painted surfaces requiring repair, the LPA will require that surfaces be repaired following paint stabilization requirements in 24 CFR 35.1330(b) including:

- Repair will be conducted by a person or firm with interim control training under 24 CFR 35.1330 or EPA Renovator certification under 40 CFR 745.226.
- Safe work practices under 24 CFR 35.1350 will be followed, including occupant protections, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(d).
- Worksite clearance will be conducted by an EPA-certified professional under 24 CFR 35.1340, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(d).
- Most of the time there is no money in the budget to cover the costs therefore it is the expense of the seller. Otherwise, the unit is not HOME eligible.



HOME Property Standards, Code Compliance, and Inspections

The unit must meet the HOME Property Standards and code compliance no more than 90 days prior to the written agreement AND prior to purchase. This means that code compliance/property standards could come before OR after the written agreement date. This allows the seller to rectify any outstanding code issues, if needed/possible.

If code compliance is not obtained prior to closing or the unit does not meet the HOME Property Standards the unit is deemed ineligible to receive HOME funds.



The LPA must complete the Property Standard Attestation form based on their own independent site visit in addition to obtaining NYS code compliance sign off from an official qualified to certify NYS code compliance and retain documentation of both in project files.

The Form is located on the HOME website <https://hcr.ny.gov/nys-home-program>.

Terms of Assistance (POA)

HTFC requires that HOME assistance be secured with an HTFC approved security instrument. The Period of Affordability (POA) or length of the lien is based the activity and/or on the amount of HOME funds invested in the unit. The security instrument for the down payment assistance is signed and recorded at the real estate closing/transfer of title when the buyer purchases the home. It is then recorded at the County clerk's office.

The lien is a zero percent (0%) interest declining balance loan. The principal balance will be reduced on each anniversary date of when the unit was completed in IDIS. No repayment is required if the homeowner remains as principal resident throughout the POA.

The Period of Affordability for Homebuyer Down Payment Assistance is as follows:

5 Years	• Less than \$14,999
10 Years	• Between \$15,000 and \$40,000
15 Years	• \$40,001 and Over

Only hard costs, such as the purchase assistance amount should be included in the amount of the security instrument. Project soft costs and/or project delivery should not be included.

If a project consists of down payment assistance and rehab it is considered a single homebuyer activity.

Therefore, the term of the security instrument (POA) is based on the total HOME assistance to the buyer, and it should be covered by a single security instrument. The security instrument should be filed with the County after rehab is completed. The LPA should get an initial security instrument signed at closing to avoid any issue with the buyer not signing it but hold it in the file. An updated security instrument can be signed once rehab is complete and the final amounts determined.

The LPA must keep a copy of the signed security instrument in the client file before the original gets sent for public filing and recording.

Once the project is completed, LPAs must ensure HTFC receives a filed copy of the recorded note and mortgage from the County Clerk.

See also Chapter 5, Securing HOME Funds and Period of Affordability of the General plan.

Chapter Six: Activity Setup and Completion

Setup

A Homebuyer Set Up Form located on the HOME website should be submitted when:

- First File Part 1 is approved
- Project underwriting and subsidy layering has been completed
- Tier 2 environmental approval received
- The unit has been inspected by the LPA within the last 90 days
- A written agreement for assistance between the LPA and homebuyer has been signed and dated
- The closing on the home to be purchased is imminent (contract signed pending closing)
- Scope of work for home repairs has been completed, the rehabilitation contract has been signed and the work is scheduled to start immediately after purchase by homebuyer (if program includes rehab)

The setup amount should include hard costs, soft costs, and project delivery.

For homebuyer assistance with rehabilitation, the total amount of expected costs (down payment/closing cost and housing rehabilitation) must be submitted in one set up.

All set ups should be submitted to the HOME IDIS mailbox at: homeidis@hcr.ny.gov

Completion

The Completion Report should be submitted with the final disbursement for the project when:

- First File Part 2 approved
- Project is complete and all funds have been disbursed
- Closing has taken place
- If applicable, all housing rehabilitation is complete
- NYS and/or local code is documented
- The security instrument has been publicly recorded

All completions should be submitted to the HOME IDIS mailbox at: homeidis@hcr.ny.gov

Chapter Seven: Rehabilitation with Homebuyer Down Payment Assistance

NOTE: This Section applies only if the rehabilitation was included and approved at contract and in the program budget.

If rehab over \$5,000 in HOME funds is used, all rehabilitation requirements outlined for homeowner housing rehabilitation apply.

Whether using HOME funds or other sources, rehabilitation must be complete within 6 months of purchase and NYS local code compliance received.

The LPA must document the LPA and homebuyer's role in the housing rehabilitation process, contractor selection, hiring and construction management process to ensure there is the capacity to complete the housing rehabilitation within 6 months of purchase.

The homebuyer is not able to reside in the unit until after all health and safety issues and code violations (related to health and safety issues) are repaired.